

ESTTA Tracking number: **ESTTA300283**

Filing date: **08/11/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	TI Beverage Group, Ltd.
Granted to Date of previous extension	11/04/2009
Address	9107 Wilshire Blvd., Ste. 425 Beverly Hills, CA 90210 UNITED STATES

Attorney information	Michael Machat Machat & Associates 9107 Wilshire Blvd., Ste. 425 Beverly Hills, CA 90210 UNITED STATES michael@machatlaw.com Phone:(310) 860-1833
----------------------	--

Applicant Information

Application No	77531683	Publication date	07/07/2009
Opposition Filing Date	08/11/2009	Opposition Period Ends	11/04/2009
Applicant	Home Box Office, Inc. 1100 Avenue of the Americas New York, NY 10036 UNITED STATES		

Goods/Services Affected by Opposition


Class 032. All goods and services in the class are opposed, namely: Non-alcoholic beverages, namely, carbonated beverages
--

Grounds for Opposition


False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition


U.S. Application No.	77501649	Application Date	06/18/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	TRUE BLOOD		


Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: Distilled Spirits; Spirits and liqueurs; Wine

U.S. Registration No.	2263907	Application Date	05/21/1996
Registration Date	07/27/1999	Foreign Priority Date	NONE
Word Mark	VAMPIRE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1988/02/10 First Use In Commerce: 1989/10/31 wines		


U.S. Registration No.	3319536	Application Date	08/10/2004
Registration Date	10/23/2007	Foreign Priority Date	NONE
Word Mark	DRACULA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2007/06/18 First Use In Commerce: 2007/06/18 WINE		

U.S. Registration No.	3502158	Application Date	09/21/2006
Registration Date	09/16/2008	Foreign Priority	NONE

		Date	
Word Mark	CHATEAU DU VAMPIRE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2008/04/24 First Use In Commerce: 2008/04/24 Wine		

U.S. Registration No.	3418138	Application Date	09/21/2007
Registration Date	04/29/2008	Foreign Priority Date	NONE
Word Mark	VAMPIRE VINEYARDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2005/08/11 First Use In Commerce: 2005/08/11 Wines		

U.S. Registration No.	3082097	Application Date	02/04/2005
Registration Date	04/18/2006	Foreign Priority Date	NONE
Word Mark	VAMPYRE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2002/09/05 First Use In Commerce: 2002/09/05 Distilled Spirits

U.S. Registration No.	2681906	Application Date	03/02/2001
Registration Date	01/28/2003	Foreign Priority Date	NONE
Word Mark	VAMP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2002/02/05 First Use In Commerce: 2002/02/05 SOFT DRINK COLAS; FRUIT DRINKS; FRUIT FLAVORED SOFT DRINKS; POP SOFT DRINKS; ENERGY DRINKS, NAMELY, SPORTS DRINKS		

U.S. Registration No.	2051160	Application Date	07/13/1994
Registration Date	04/08/1997	Foreign Priority Date	NONE
Word Mark	DRACOLA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1996/10/23 First Use In Commerce: 1996/10/23 soft drinks		

U.S. Registration No.	3167606	Application Date	04/11/2005
Registration Date	11/07/2006	Foreign Priority Date	NONE
Word Mark	TASTE OF IMMORTALITY		

Design Mark	<h1>Taste of Immortality</h1>
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1995/02/05 First Use In Commerce: 1995/06/05 Wines and Distilled Spirits

U.S. Registration No.	3079403	Application Date	04/12/2005
Registration Date	04/11/2006	Foreign Priority Date	NONE
Word Mark	SIP THE BLOOD OF THE VINE		
Design Mark	<h1>Sip the blood of the vine</h1>		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1988/03/05 First Use In Commerce: 1989/06/05 Wines and Distilled Spirits		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	TRUEBLOOD		
Goods/Services	Wine		

Related Proceedings	Please See Opposition No. 91188606 entitled Home Box Office, Inc. v. Michael Machat concerning application serial number 77501649 for the mark TRUE BLOOD
---------------------	---

Attachments	77501649#TMSN.jpeg (1 page)(bytes) 78464714#TMSN.jpeg (1 page)(bytes) 77004432#TMSN.jpeg (1 page)(bytes) 77285791#TMSN.jpeg (1 page)(bytes)
-------------	--

	78560472#TMSN.jpeg (1 page)(bytes) 78605693#TMSN.jpeg (1 page)(bytes) 78606606#TMSN.jpeg (1 page)(bytes) TruBloodNotice_of_Opposition_Aug11_2009.pdf (8 pages)(394953 bytes)
--	--

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/MM/
Name	Michael Machat
Date	08/11/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application Number **77531683**
For the mark TRU BLOOD Published in the Official Gazette on
July 7, 2009

TI BEVERAGE GROUP, INC.,)	
)	
)	
)	
Opposer,)	
)	
v.)	
)	
HOME BOX OFFICE, INC.,)	
)	
Respondent.)	
)	
)	

TTAB
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

NOTICE OF OPPOSITION, PURSUANT TO 15 U.S.C. § 1063

OPPOSER, TI BEVERAGE GROUP, LTD, ("TI BEVERAGE GROUP") by its attorney Michael Machat, alleges on knowledge as to its own acts and otherwise on information and belief and as grounds for opposition as follows:

1. TI BEVERAGE GROUP believes that allowing Application Serial No. 77531683 to proceed to registration will likely cause confusion, mistake, or deception in violation of Section 2(d) of the Trademark Act; will suggest a false connection with OPPOSER in violation of Section 2(a) of the Trademark Act; and will cause TI BEVERAGE GROUP damage.

2. TI BEVERAGE GROUP, LTD. is a Delaware Corporation doing business as both Transylvania Imports and as Vampire Vineyards, with its business office in Beverly Hills, California.

3. Applicant Home Box Office, Inc., (“HBO”) upon information and belief, is a Delaware Corporation, with offices in Los Angeles County.

4. Upon information and belief, on July 25, 2008, HBO filed an intent to use Application for TRU BLOOD (“Applicant’s Mark”) as a trademark in international class 32 for Non-alcoholic beverages, namely, carbonated beverages (“Applicant’s Goods”) with knowledge not only of TI BEVERAGE GROUP’s Vampire family of beverage marks, but also with knowledge of the pre-existing wine brand with the same sounding name, TRUEBLOOD. The Application was published in the Official Gazette on July 7, 2009, and the time to oppose has been extended.

5. TI BEVERAGE has been marketing both alcoholic and non-alcoholic beverages under the following brand names for many years, including: VAMPIRE (for wines – US Trademark Registration No. 2263907); DRACULA (for wines --US Trademark Registration No. 78464714); CHATEAU DU VAMPIRE (for wines – US Trademark Registration No. 3502158); VAMPIRE VINEYARDS (for wines – US Trademark Registration No. 3418138); VAMPYRE (for vodka – US Trademark Registration No. 3082097); VAMP (energy drink --- US Trademark Registration No. 2681906); and DRACOLA (a red colored cola – US Trademark Registration No. 2051160) amongst other brands. TI BEVERAGE is the exclusive licensee of Michael Machat, who is the Registrant for all of these aforementioned brands. By virtue of its extended use in commerce, the VAMPIRE registration has become incontestable. TI

BEVERAGE also is the exclusive licensee of the phrases TASTE OF IMMORTALITY and SIP THE BLOOD OF THE VINE, (TM Registrations 3167606 and 3079403, respectfully, also registered in Machat's name.)

6. The origin of Vampire wine, and TI BEVERAGE GROUP'S claim of right goes back to 1988, when Machat released a French bottled Algerian Syrah under the brand name Vampire. The first sale was to MCA Records and Alice Cooper, and Machat promoted the wine under the slogans, "Sip the Blood of the Vine!", "Taste of Immortality", and explained on the back label that the reason no one hears stories about vampires attacking humans anymore is because Vampires have been drinking Vampire wine instead. The label went on to state that "A trickle of this full bodied Vampire Wine will satiate and prolong the life of any normal blood sucking human predator." Although the labels have changed over the years, and the explanation has been condensed, the slogan "Sip the Blood of the Vine" has remained ever since.

7. The website marketing for Vampire wine has consistently stressed that the Vampire Vineyards are run by a group of Vampires and that Machat, a mere mortal and attorney, is the front for a circle of Vampires.

8. In or around 2003, Hope Trueblood Goldie and her husband Stuart Goldie formed a company called Trueblood Winery, LLC, and began making and marketing ultra premium Napa Valley wine under Hope's maiden name, TRUEBLOOD. They decided to use Hope's maiden name for the additional purpose of calling attention to the bloodlike quality of wine produced from red grapes.

9. The Trueblood wine has been offered for sale nationally via the website Truebloodwines.com. The Trueblood Wine has also been sold in various states, counties

and cities throughout the US, including California, New York and other markets. The Trueblood Cabernet Sauvignon retails at a price of approximately \$40 per 750 ML Bottle. The Trueblood Syrah retails for approximately \$30 per 750 ML Bottle.

10. On or about July 31st, 2009, TI BEVERAGE GROUP acquired the TRUEBLOOD brand of wine, including all intellectual property rights associated with the brand, including the common law trademark and copyrights, as well as the good will associated with the brand.

11. In or around September of 2008, HBO began to televise a show titled TRUE BLOOD in which some of the fictional characters (those that profess to be vampires) drink a fictional drink called Tru Blood which is supposed to be a synthetic blood that prolongs the life of vampires. The series is based upon a book written by Charlene Harris, which upon information and belief, was first published in 1998, ten years after Machat began marketing his wine as the cure for Vampires seeking to live amongst humans in society without having to drink human blood.

12. TI BEVERAGE GROUP, either by itself or through its predecessors in interest has been selling Vampire wine, Trueblood Wine and other related wines, such as Dracula and Chateau du Vampire, prior to the date of release of defendant HBO's TV show True Blood which, upon information and belief was released in September of 2008.

13. Similarly, TI BEVERAGE GROUP, either by itself or through its predecessors in interest, has been selling a red colored vodka under the name VAMPYRE since approximately 2002. Like the marketing behind Vampire wine, the marketing material created for VAMPYRE vodka back in 2002 explained that Vampires have been drinking VAMPYRE vodka for years.

14. Similarly, TI BEVERAGE GROUP, either by itself or through its predecessors in interest, has been selling a red colored energy drink under the brand name VAMP (which is an abbreviation for Vampire.) Also, TI BEVERAGE GROUP, either by itself or through its predecessors in interest, has also been selling DRACOLA, a red soda with a cola flavor.

15. In addition to beverages with a Vampire twist to its name, TI BEVERAGE GROUP also sells Vampire Fine Belgian Chocolate and Vampire Gourmet Coffee. A trademark application is pending for Vampire Chocolates and Coffee in Machat's name, who also has licensed the rights to sell Vampire branded chocolates and coffee to TI BEVERAGE GROUP.

16. Upon information and belief, TI BEVERAGE GROUP's predecessors in interest in the TRUEBLOOD wine, first began selling Trueblood wine in the United States in 2003. Upon information and belief, Plaintiff's predecessors in interest in the TRUEBLOOD brand of wine, first began marketing its TRUEBLOOD family wine on-line at www.truebloodwines.com in 2003, approximately 5 years before the HBO TV show of the same name.

17. TI BEVERAGE GROUP has spent substantial amounts of time and money building up, advertising, and promoting its beverage brands. By virtue of the popularity of its beverage brands, its advertising, promotion, and sales, plus the popularity of its website, vampire.com, TI BEVERAGE GROUP has built up and owns an extremely valuable goodwill which is symbolized by TI BEVERAGE GROUP's various marks.

COUNT I – LIKELIHOOD OF CONFUSION

18. OPPOSER TI BEVERAGE GROUP realleges the allegations in paragraphs 1 through 17.

19. Tru Blood, Trueblood and True Blood are all pronounced the same. If Applicant is granted a registration of a mark with a Trueblood sounding name, then consumers will be confused as to the source of origin of both Applicant's and TI BEVERAGE GROUP's beverages.

20. More specifically, if HBO is permitted to market a beverage with a Trueblood sounding name, it is possible that some consumers will become confused about the source and origin of TI BEVERAGE GROUP's products, and may mistakenly believe that TI BEVERAGE GROUP's products are produced by Defendants.

21. Comparatively speaking, soft drinks are generally relatively inexpensive, unsophisticated, and unrefined. By contrast, wines are more expensive and can be incredibly complex, with nuances of flavors and changing aromas; consequently, wines are generally perceived as more upscale than a soft drink. HBO, if allowed to sell and distribute beverage products with a TRUEBLOOD sounding name, will cause consumers to believe that TI BEVERAGE GROUP's wine products are inexpensive, unsophisticated, and unrefined. This is particularly true for TI BEVERAGE GROUP'S VAMPIRE brand which sells for approximately \$10.00 per bottle. Also, if HBO's application is allowed to register, it will hinder development of TI BEVERAGE GROUP'S *TRUEBLOOD* wine brand, which currently sells for between \$30 and \$40 per bottle, and interfere with, if not make it impossible, TI BEVERAGE GROUP's ability to market its *TRUEBLOOD* wine brand as a super premium wine.

22. HBO, if allowed to continue in the distribution, marketing, promotion, advertisement, offering for sale, and sale of the infringing product, will cause consumers to believe that their TRU BLOOD soft drink originates from the same source as TRUEBLOOD WINE and/or TI BEVERAGE GROUP'S other products. This will lead to further irreparable harm to TI BEVERAGE GROUP's goodwill, reputation, and sales.

23. HBO has large resources with which to market and advertise its intended Tru Blood soft drink. HBO's resources vastly exceed those of TI BEVERAGE GROUP. Consequently, marketing and advertising efforts by HBO are likely to mislead consumers to believe that TI BEVERAGE GROUP's Trueblood wines are making unauthorized use of trademarks that HBO owns. Consumers are likely to be misled to believe that TI BEVERAGE GROUP is misusing the *TRUEBLOOD* mark. As a result, TI BEVERAGE GROUP's reputation and goodwill will be impaired.

24. HBO's proposed TRU BLOOD mark so closely resembles TI BEVERAGE GROUP's products that the public is likely to be confused and deceived, and to assume erroneously that the TRU BLOOD soft drinks are those of TI BEVERAGE GROUP, or that HBO is in some way connected with, sponsored by, or affiliated with TI BEVERAGE GROUP, all to TI BEVERAGE GROUP's detriment and irreparable damage.

25. HBO is not affiliated with, connected with, endorsed by, or sponsored by TI BEVERAGE GROUP, nor has TI BEVERAGE GROUP approved or authorized any of the goods or services offered or sold by HBO.

26. TI BEVERAGE GROUP has no control over the nature and quality of the goods and services offered and sold by HBO or its licensees. Any failure, neglect, or

default by HBO or its licensees in providing such products will reflect adversely on TI BEVERAGE GROUP as being the believed source of said failure, neglect, or default, thereby hampering TI BEVERAGE GROUP's efforts to continue to protect its outstanding reputation and preventing TI BEVERAGE GROUP from further building its reputation. Said failure, neglect, or default will result in loss of sales by TI BEVERAGE GROUP, and loss of value of TI BEVERAGE GROUP's considerable expenditures to promote its goods and services under the TRUEBLOOD mark, all to the irreparable harm of TI BEVERAGE GROUP.

COUNT II --- FALSE ASSOCIATION

27. OPPOSER TI BEVERAGE GROUP realleges the allegations of paragraphs 1 through 26.

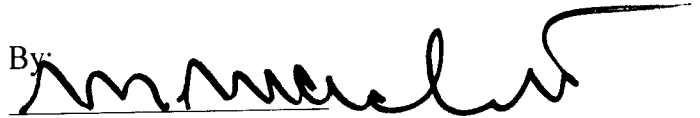
28. Applicant's proposed use of TRU BLOOD for Applicant's goods falsely suggests a connection with Opposer TI BEVERAGE GROUP and OPPOSER TI BEVERAGE GROUP'S food and beverage products in violation of Section 2(a) of the Trademark Act.

WHEREFORE, OPPOSER TI BEVERAGE GROUP prays that Application Number **77531683** for registration of TRU BLOOD be denied and that this Opposition be sustained.

Dated: August 10, 2009

Respectfully submitted for Opposer,

By:



Michael Machat
Attorney at Law
Machat & Associates, PC
9107 Wilshire Blvd., Suite 425
Beverly Hills, CA 90210
Tel: (310) 860-1833